

The conviction was attacked principally on the ground that the car driver was an accomplice. The question was raised by the defence in the Court below but the matter was not put to the jury in the course of the summing up.

Since the case of *Davies*⁽¹⁾ it is clear that if there is evidence upon which the jury might reasonably find that a witness for the prosecution was an accomplice the question must be put to the jury for their consideration and the usual warning given, even though there is other and untainted evidence on which the jury might convict.

In the circumstances it is necessary to consider whether in the present case there was evidence on which the jury might reasonably have found that the driver was an accomplice. If there was such evidence the case is not one in which the proviso can be applied.

Now where people go in a car to a spot near the scene of a robbery and the car waits and then drives them home afterwards, the driver of such a car is always subject to suspicion, strong or not according to the circumstances. In the present case the scene of the robbery was about ¼ mile from where the car waited, so the suspicion is not very strong, but the matter does not rest there. Later the same evening the driver made a statement to the police. The report does not give any names although he admitted that he knew the name of the appellant at the time the report was made and he seems to have been familiar with another of the persons in the car. He said that he did mention the name of the appellant but, however inaccurate these reports may be largely owing to difficulties of language, it is not likely that a police officer would fail to ask about names or to take down any names that were mentioned. This is not, of course, conclusive, but it seems to us that there was evidence on which the jury might have considered the witness an accomplice. In the circumstances we allowed the appeal.

Appeal allowed.

Solicitors for the appellant: *Battenberg & Talma.*

Re WONG KUP SING

[A. Cr. J. (Buhagiar J.) June 27, 1955]

[K. L. — Criminal Revision No. 14 of 1955]

Registration and Licensing of Businesses Ordinance, 1953, s. 19(1) — Failure to register business within time prescribed — Whether term of imprisonment mandatory.

The accused was charged under r. 5 of the Registration and Licensing of Businesses Rules, 1953, for failing to register his business within 2 months after commencement

of the business. He pleaded guilty and was convicted to a fine of \$200. However s. 19(1) of the Registration and Licensing of Businesses Ordinance, 1953, provides that for an offence of this kind the punishment imposed is "imprisonment for a period of one year and to a fine of \$1,000 and in the case of a continuing offence a fine of \$200 for every day during which such offence continued."

Held: for any of the offences mentioned in sub-s. (1) of s. 19 of the Registration and Licensing of Businesses Ordinance a term of imprisonment must be imposed in addition to a fine.

CRIMINAL REVISION.

E. Brown (Federal Counsel) for the Public Prosecutor.

Accused in person.

Buhagiar J. : — The said Wong Kup Sing was charged in the Magistrates' Court at Kuala Lumpur under Rule 5 of the Registration and Licensing of Businesses Rules, 1953 (L.N. No. 138 of the 26th March, 1953) for failing to lodge Form A for registration of his business within two months after the commencement of the business, an offence punishable under section 19 of the Registration and Licensing of Businesses Ordinance, 1953.

He pleaded guilty; the plea was accepted by the Court; he was convicted and sentenced to a fine of \$200.

The said Wong Kup Sing started his business on the 1st January, 1954 and such business should have been registered not later than the end of February, 1954. He did not do so until the 25th day of April, 1955 which was four days after the institution of proceedings against him. The learned Magistrate considered that a fine of \$200 or in default eight weeks imprisonment was fair and justifiable sentence in this case in view of the fact that the accused submitted his application for the registration of his business four days after the institution of proceedings and that this was the first offence of the accused.

The learned Magistrate seems, however, not to have given sufficient consideration to the fact that the accused had been carrying on his business without registration for a period of fifteen months and to the very heavy punishment provided by section 19(1) of the said Ordinance for an offence of this kind, that is "imprisonment for a period of one year and to a fine of one thousand dollars and in the case of a continuing offence a fine of two hundred dollars for every day during which such offence continued." I considered that the sentence of \$200 was manifestly inadequate and increased the fine to \$1,000 or in default six months imprisonment. I allowed the said Wong Kup Sing to pay the fine by monthly instalments of \$100 each, first instalment to be paid on the 31st July, 1955.

I was doubtful at the time I made the order whether under sub-section (1) of section 19 of the Registration and Licensing of Businesses Ordinance, 1953 a term of imprisonment was mandatory. On further consideration of the provisions of that section I am of opinion that for any of the offences mentioned in that sub-section a term of imprisonment must be imposed in addition to a fine.

Order accordingly.

**PL. RM. FAMILY & P. V. FAMILY
v. THE COMPTROLLER OF INCOME TAX**

[P. C. (Lord Morton of Henryton, Lord Radcliffe, Lord Keith of Avonholm, Lord Somervell of Harrow and Mr. L. M. D. de Silva) July 5, 1955]

[Privy Council Appeal No. s. 21 & 22 of 1954]

Income Tax Ordinance, 1947, ss. 10(1) and 14 — Revaluation claims under Debtor and Creditor (Occupation Period) Ordinance, 1948 — Irrecoverable amounts not deductible from profits of later years.

These were appeals from the judgment of the Court of Appeal of the Federation of Malaya reported in (1953) M.L.J. 156. The question for decision was whether or not the appellants, in computing their liability to income tax for the year of assessment 1951, were entitled to deduct from their profits the difference between the amounts which they had entered in their accounts in respect of their claims under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and the amounts which they ultimately accepted in settlement of such claims.

Held: there was in fact no real losses in these cases as there was no evidence to show that the claims of the appellants were worth more on December 31, 1949, than the sums which were ultimately accepted in full settlement by them.

PRIVY COUNCIL APPEAL.

Henry Salt Q.C. (W. Lindsay with him) for the appellants.

Roderick Watson for the respondent.

Lord Morton of Henryton : — This is an appeal from orders of the Court of Appeal, Supreme Court of the Federation of Malaya, in two suits which raised the same point of law and were consolidated, for the purpose of this Appeal, by Order dated 17th June, 1954.

The question of law to be decided is whether or not the appellants, in computing their liability to income tax for the year of assessment 1951, are entitled to deduct from their profits the difference between the amounts which they had entered in their accounts in respect of their claims under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and the amounts which they ultimately accepted in settlement of such claims.

The Ordinance of 1948 came into force on the 1st October, 1949, and was directed to readjusting the position, as debtor and creditor, where debts had been paid off, during the Japanese occupation of Malaya, in currency issued by the occupying power. Section 2 of the Ordinance contains the following definitions :—

“Malayan currency” means the dollar currency in circulation and constituting legal tender in the territories now comprising Malaya before or after the occupation period;

“Occupation currency” means any currency issued by the Occupying Power and in circulation during the occupation period, but does not include Malayan currency;

“Occupation debt” means a debt payable by virtue of an obligation incurred during the occupation period and accruing due at any time;

“Occupation period” means the period commencing on the fifteenth day of February, 1942, and ending on the fifth day of September, 1945, both dates inclusive, and includes any part of such period;

“Pre-occupation debt” means a debt payable by virtue of an obligation incurred prior to the commencement of the occupation period and accruing due at any time.

The relevant parts of sections 4 and 11 of the Ordinance were as follows :—

“4. — (1) Subject to the provisions of sub-section (2) of this section, where any payment was made during the occupation period in Malayan currency or occupation currency by a debtor or by his agent . . . to a creditor or to his agent . . . and such payment was made in respect of a pre-occupation debt, such payment shall be a valid discharge of such pre-occupation debt to the extent of the face value of such payment.

(2) In any case — (a) where the acceptance of such payment in occupation currency was caused by duress or coercion; or (b) where such payment was made after the thirty-first day of December, 1943, in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which — (i) was not due at the time of such payment; or (ii) if due, was not demanded by the creditor or his agent on his behalf and was not payable within the occupation period under a time essence contract; or (iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent; or (c) . . . such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation.”

It is to be observed that in order to escape from the general rule laid down by sub-section (1), a creditor would have to establish the facts necessary to bring a payment to him within the provisions of sub-section (2).

Section 11 of the Ordinance deals with secured debts, and provides as follows :—

“11. — (1) In any case where a debt purporting to have been discharged in whole or in part by payment in occupation currency is, by virtue of the provisions of this Ordinance, deemed to be partly undischarged, and where the payment of such debt before it purported to be discharged as aforesaid was secured by a charge over property movable or immovable and such charge has, or purports to have, been discharged by the chargee or his agent . . . such discharge shall . . . be void against the charger or his personal representatives and any person claiming through or under him or them, and the charged property shall stand charged with the revalued balance of the debt and interest, if any, accrued and unpaid and to accrue thereon.”